BILL NO. S-82-11-30

SPECIAL ORDINANCE NO. S-228-82

AN ORDINANCE approving Resolution No. 363-82, Terminal Ponds & Sludge Lagoon Contract, with T & G Excavating, Inc., in connection with the Board of Public Works.

BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA:

SECTION 1. That a certain Contract dated September 15, 1982, between the City of Fort Wayne, Indiana, by and through its Mayor and the Board of Public Works and T & G Excavating, Inc., for:

the repair of the Terminal Ponds & Sludge Lagoons, as detailed in the Federal Emergency Management Agency Damage Survey Reports Nos. 047122, 047124, 047127 and 044873;

under Board of Public Works Resolution No. 363-82, involving a total cost of Three Hundred Sixty Thousand Five Hundred Eighty-Five and 83/100 Dollars ($360,585.83), all as more particularly set forth in said Resolution and Contract, and which is on file with the Office of the Board of Public Works and is by reference incorporated herein, made a part hereof and is hereby in all things ratified, confirmed and approved. Two copies of said Contract are on file with the Office of the City Clerk and are made available for public inspection, according to law.

SECTION 2. That this Ordinance shall be in full force and effect from and after its passage and any and all necessary approval by the Mayor.

Councilmember

APPROVED AS TO FORM
AND LEGALITY

Bruce O. Boxberger, City Attorney

Read the first time in full and on motion by Burns, seconded by Shambach, and duly adopted, read the second time by title and referred to the Committee City Utilities (and the City Plan Commission for recommendation) and Public Hearing to be held after due legal notice, at the Council Chambers, City-County Building, Fort Wayne, Indiana, on ____, the ____ day of ____, 19__, at ____ o'clock __.M.,E.S.T.

DATE: 11-23-82

C. W. Westerman
CHARLES W. WESTERMAN - CITY CLERK

Read the third time in full and on motion by Burns, seconded by Shambach, and duly adopted, placed on its passage. PASSED ~~(LOST)~~ by the following vote:

	AYES	NAYS	ABSTAINED	ABSENT	TO-WIT:
TOTAL VOTES	9				
BRADBURY	✓				
BURNS	✓				
EISBART	✓				
GiaQUINTA	✓				
SCHMIDT	✓				
SCHOMBURG	✓				
SCRUGGS	✓				
STIER	✓				
TALARICO	✓				

DATE: 12-14-82

Charles W. Westerman
CHARLES W. WESTERMAN - CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as ~~(ZONING MAP)~~ ~~(GENERAL)~~ ~~(ANNEXATION)~~ (SPECIAL) ~~(APPROPRIATION)~~ ORDINANCE ~~(RESOLUTION)~~ NO. S-228-82 on the 14th day of December, 19 82

ATTEST: (SEAL)

Charles W. Westerman
CHARLES W. WESTERMAN - CITY CLERK

Samuel J. Talarico
PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 15th day of December, 19 82, at the hour of 11:30 o'clock A.M.,E.S.T.

Charles W. Westerman
CHARLES W. WESTERMAN - CITY CLERK

Approved and signed by me this 17th day of December 19 82, at the hour of 4 o'clock P.M.,E.S.T.

Win Moses Jr.
WIN MOSES, JR. - MAYOR

BILL NO. S-82-11-30

REPORT OF THE COMMITTEE ON CITY UTILITIES

WE, YOUR COMMITTEE ON City Utilities TO WHOM WAS REFERRED AN ORDINANCE approving Resolution No. 363-82, Terminal Ponds & Sludge Lagoon Contract, with T & G Excavating, Inc., in connection with the Board of Public Works

HAVE HAD SAID ORDINANCE UNDER CONSIDERATION AND BEG LEAVE TO REPORT BACK TO THE COMMON COUNCIL THAT SAID ORDINANCE DO PASS.

PAUL M. BURNS - CHAIRMAN

MARK E. GiaQUINTA - VICE CHAIRMAN

JAMES S. STIER

JANET G. BRADBURY

ROY J. SCHOMBURG

12-14-82

DATE: CHAIRMAN; CITY CLERK

72-91-20
9/15/82.

·17·

CONTRACT

THIS CONTRACT, made the 15 day of September, 1982, by and between T-G EXCAVATING, INC., 5544 Huguenard Road, Fort Wayne, Indiana, hereinafter called the "Contractor" and the CITY OF FORT WAYNE, INDIANA, a municipal corporation, hereinafter called the "Owner", WITNESSETH, that the Contractor and the Owner, for the considerations stated herein, agree as follows:

ARTICLE I. SCOPE OF WORK. The Contractor shall perform everything required to be performed and shall provide and furnish all of the labor, materials, necessary tools, equipment and all utility and transportation services required to perform and complete in a workmanlike manner the construction of:

RESOLUTION NO. 363-82
TERMINAL PONDS & SLUDGE LAGOONS RECONSTRUCTION PROJECT
D.S.R. NUMBERS 047122, 047124, 047127 and 044873

for the Owner, all in strict accordance with the drawings and specifications, including any and all addenda, prepared by Bonar & Associates, Inc., which drawings and specifications are made a part of this Contract, and in strict compliance with the Contractor's proposal and the other contract documents herein mentioned which are a part of this Contract; and the Contractor shall do everything required by this Contract and the other documents constituting a part thereof.

ARTICLE II. THE CONTRACT PRICE. The Owner shall pay to the Contractor for the performance of this Contract, subject to any additions or deductions provided therein, in current funds, the contract price of Three Hundred Sixty Thousand, Five Hundred Eighty-Five Dollars and Eighty-Three Cents ($360,585.83). Payments are to be made to the Contractor in accordance with and subject to the provisions embodied in the documents made a part of this Contract.

ARTICLE III. COMPONENT PARTS OF THIS CONTRACT. This Contract consists of the following component parts, all of which are as fully a part of this Contract as if herein set out verbatim, or if not attached, as if hereto attached.

1. This Agreement
2. The Contractor's Proposal
3. Advertisement
4. Specifications
   a. General and Supplemental Conditions of the contract
   b. Instructions to Bidders
   c. Detailed Specifications
   d. FEMA Regulations
   e. EEO Requirements
5. Drawings
   a. Detailed Drawings
   b. City of Fort Wayne Construction Standards

In the event that any provision in any of the above component parts of this Contract conflicts with any provision in any other of the component parts, the provision in the component part first enumerated above shall govern over any other component part which follows it numerically, except as may be other-

wise specifically stated.

ARTICLE IV. GUARANTEE. The Contractor hereby agrees to protect the Owner against imperfections in materials, equipment and workmanship, which may be or which may become apparent during the period of construction or erection, or which may develop within a period of one (1) year subsequent to the date of final acceptance by the Owner; and the Contractor shall, at his own expense, remove and replace in whole or in part any such work, materials, or equipment which may prove defective or unsuitable for the service performed or to be performed and/or which may show unreasonable deterioration within said period, upon the written demand and to the full satisfaction of the Owner.

IN WITNESS WHEREOF, the parties have caused this instrument to be executed in three (3) original counterparts the day and year first above written.

T-G EXCAVATING, INC.
Contractor

(SEAL)

ATTEST: By Thomas M. Stockamp

George B. Merrill — Pres.
Sect. — Title

Title

CITY OF FORT WAYNE, INDIANA
Owner

(SEAL)

ATTEST: By

Sandra E. Kennedy — Stephen A. Bailey

Clerk - Bd of Works — Roberta Anderson Staten
Title

Betty R. Collins

Its Board of Public Works

Bond No.....

Fidelity and Deposit Company

HOME OFFICE OF MARYLAND *BALTIMORE, MD. 21203*

Performance Bond

KNOW ALL MEN BY THESE PRESENTS:

That T & G Excavating, Inc., 5544 Huguenard Road,
(Here insert the name and address or legal title of the Contractor)
Fort Wayne, Indiana 46808,
as Principal, hereinafter called Contractor, and FIDELITY AND DEPOSIT COMPANY OF MARYLAND, a corporation of the State of Maryland, with its home office in the City of Baltimore, Maryland, U. S. A., as Surety, hereinafter called Surety, are held and firmly bound unto Board of Works, City of Fort Wayne, City County Building, 1 Main Street, Fort Wayne, Indiana 46802,
(Here insert the name and address or legal title of the Owner)
as Obligee, hereinafter called Owner,
in the amount of Three Hundred Sixty Thousand Five Hundred Eighty Five Dollars and Eighty Three Cents ----------

Dollars ($ 360,585.83), for the payment whereof Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, Contractor has by written agreement dated .....1982..., entered into a contract with Owner for Resolution #363-82 Sewer Improvements, Group 6B, Terminal Ponds & Lagoons, Fort Wayne, Indiana

in accordance with drawings and specifications prepared by City of Fort Wayne, Indiana
(Here insert full name, title and address)
which contract is by reference made a part hereof, and is hereinafter referred to as the Contract.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if Contractor shall promptly and faithfully perform said contract, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

The Surety hereby waives notice of any alteration or extension of time made by the Owner.

Whenever Contractor shall be, and declared by Owner to be in default under the Contract, the Owner having performed Owner's obligations thereunder, the Surety may promptly remedy the default, or shall promptly

(1) Complete the Contract in accordance with its terms and conditions, or

(2) Obtain a bid or bids for completing the Contract in accordance with its terms and conditions, and upon determination by Surety of the lowest responsible bidder, or, if the Owner elects, upon determination by the Owner and Surety jointly of the lowest responsible bidder, arrange for a contract between such bidder and Owner, and make available as work progresses (even though there should be a default or a succession of defaults under the contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the contract price; but not exceeding, including other costs and damages for which the Surety may be liable hereunder, the amount set forth in the first paragraph hereof. The term "balance of the contract price," as used in this paragraph, shall mean the total amount payable by Owner to Contractor under the Contract and any amendments thereto, less the amount properly paid by Owner to Contractor.

Any suit under this bond must be instituted before the expiration of two (2) years from the date on which final payment under the contract falls due.

No right of action shall accrue on this bond to or for the use of any person or corporation other than the Owner named herein or the heirs, executors, administrators or successors of Owner.

Signed and sealed this .....day of.....A.D. 19 82...

In the presence of:

Harold R. Zimmer

T & G Excavating, Inc. (SEAL)
Principal
Thomas M. Stockemer, Pres.
Title

FIDELITY AND DEPOSIT COMPANY OF MARYLAND

Barbara J. Hause
Barbara J. Hause

By Virginia T. Axson (SEAL)
Virginia T. Axson *Title*

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Approved by The American Institute of Architects, A.I.A. Document No. A-311 February 1970 Edition.

Bond No.....

Fidelity and Deposit Company

HOME OFFICE OF MARYLAND BALTIMORE, MD. 21203

Labor and Material Payment Bond

Note: This bond is issued simultaneously with Performance Bond in favor of the owner conditioned on the full and faithful performance of the contract.

KNOW ALL MEN BY THESE PRESENTS:

That T & G Excavating, Inc., 5544 Dupuypard Road, Fort Wayne, Indiana 46809
(Here insert the name and address or legal title of the Contractor)
as Principal, hereinafter called Principal, and FIDELITY AND DEPOSIT COMPANY OF MARYLAND, a corporation of the State of Maryland, with its home office in the City of Baltimore, Maryland, U. S. A., as Surety, hereinafter called Surety, are held and firmly bound unto Board of Works, City of Fort Wayne, City County Building, 1 Main Street, Fort Wayne, Indiana 46802,
(Here insert the name and address or legal title of the Owner)
as Obligee, hereinafter called Owner, for the use and benefit of claimants as hereinbelow defined, in the amount of Three Hundred Sixty Thousand Five Hundred Eighty Five Dollars and Eighty Three Cents
(Here insert a sum equal to at least one-half of the contract price)
Dollars ($ 360,585.83), for the payment whereof Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, Principal has by written agreement dated .....19 82, entered into a contract with Owner for Resolution #363-82 Sewer Improvements, Group 6B, Terminal Ponds & Lagoons, Fort Wayne, Indiana

in accordance with drawings and specifications prepared by City of Fort Wayne, Indiana
(Here insert full name, title and address)
which contract is by reference made a part hereof, and is hereinafter referred to as the Contract.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if Principal shall promptly make payment to all claimants as hereinafter defined, for all labor and material used or reasonably required for use in the performance of the Contract, then this obligation shall be void; otherwise it shall remain in full force and effect, subject, however, to the following conditions:

1. A claimant is defined as one having a direct contract with the Principal or with a sub-contractor of the Principal for labor, material, or both, used or reasonably required for use in the performance of the contract, labor and material being construed to include that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental of equipment directly applicable to the Contract.

2. The above named Principal and Surety hereby jointly and severally agree with the Owner that every claimant as herein defined, who has not been paid in full before the expiration of a period of ninety (90) days after the date on which the last of such claimant's work or labor was done or performed, or materials were furnished by such claimant, may sue on this bond for the use of such claimant, prosecute the suit to final judgment for such sum or sums as may be justly due claimant, and have execution thereon. The Owner shall not be liable for the payment of any costs or expenses of any such suit.

3. No suit or action shall be commenced hereunder by any claimant:

(a) Unless claimant, other than one having a direct contract with the Principal, shall have given written notice to any two of the following: The Principal, the Owner, or the Surety above named, within ninety (90) days after such claimant did or performed the last of the work or labor, or furnished the last of the materials for which said claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were furnished, or for whom the work or labor was done or performed. Such notice shall be served by mailing the same by registered mail or certified mail, postage prepaid, in an envelope addressed to the Principal, Owner or Surety, at any place where an office is regularly maintained for the transaction of business, or served in any manner in which legal process may be served in the state in which the aforesaid project is located, save that such service need not be made by a public officer.

(b) After the expiration of one (1) year following the date on which Principal ceased work on said Contract, it being understood, however, that if any limitation embodied in this bond is prohibited by any law controlling the construction hereof such limitation shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by such law.

(c) Other than in a state court of competent jurisdiction in and for the county or other political subdivision of the state in which the project, or any part thereof, is situated, or in the United States District Court for the district in which the project, or any part thereof, is situated, and not elsewhere.

4. The amount of this bond shall be reduced by and to the extent of any payment or payments made in good faith hereunder, inclusive of the payment by Surety of mechanics' liens which may be filed of record against said improvement, whether or not claim for the amount of such lien be presented under and against this bond.

Signed and sealed this .....day of .....A.D. 19 82

In the presence of:

Harold R. Zimmer

T & G Excavating, Inc. (SEAL)
Principal
Thomas M. Stockamp, Pres.
Title

FIDELITY AND DEPOSIT COMPANY OF MARYLAND

Barbara J. Hause
Barbara J. Hause

By Virginia T. Axson (SEAL)
Virginia T. Axson
Title

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Approved by The American Institute of Architects, A.I.A. Document No. A-311 February 1970 Edition.

TITLE OF ORDINANCE Res. #363-82, Terminal Ponds & Sludge Lagoon Reconstruction

DEPARTMENT REQUESTING ORDINANCE Board of Public Works S-82-11-30

SYNOPSIS OF ORDINANCE Contract with the City of Fort Wayne, Indiana & T ' C Excavating, Inc., for Repair of the Terminal Ponds & Sludge Lagoons, ~~Reconstruction Project~~ AS DETAILED IN THE Federal Emergency Management Agency Damage Survey Reports Numbers 047122, 047124,047127 and 044873.

Prior approval obtained on August 24, 1982

EFFECT OF PASSAGE to repair damage that occurred during the 1982 flood.

EFFECT OF NON-PASSAGE

MONEY INVOLVED (DIRECT COSTS, EXPENDITURE, SAVINGS) $360,585.83

ASSIGNED TO COMMITTEE